

9.108-3

(b) This prohibition does not apply as follows:

(1) When using Fiscal Year 2008 funds for any contract entered into before December 26, 2007, or for any order issued pursuant to such contract.

(2) When using Fiscal Year 2009 funds for any contract entered into before March 11, 2009, or for any order issued pursuant to such contract.

(3) When using Fiscal Year 2010 funds for any contract entered into before December 16, 2009, or for any order issued pursuant to such contract.

[76 FR 31413, May 31, 2011]

9.108-3 Representation by the offeror.

(a) In order to be eligible for contract award when using Fiscal Year 2008 through Fiscal Year 2010 funds, an offeror must represent that it is not an inverted domestic corporation or subsidiary. Any offeror that cannot so represent is ineligible for award of a contract using such appropriated funds.

(b) The contracting officer may rely on an offeror's representation that it is not an inverted domestic corporation unless the contracting officer has reason to question the representation.

76 FR 31413, May 31, 2011

9.108-4 Waiver.

Any agency head may waive the prohibition in subsection 9.108-2 and the requirement of subsection 9.108-3 for a specific contract if the agency head determines in writing that the waiver is required in the interest of national security, documents the determination, and reports it to the Congress.

[76 FR 31413, May 31, 2011]

9.108-5 Solicitation provision and contract clause.

When using funds appropriated in Fiscal Year 2008 through Fiscal Year 2010, unless waived in accordance with FAR 9.108-4, the contracting officer shall—

(a) Include the provision at 52.209-2, Prohibition on Contracting with Inverted Domestic Corporations—Representation, in each solicitation for the acquisition of products or services (including construction); and

(b) Include the clause at 52.209-10, Prohibition on Contracting with In-

48 CFR Ch. 1 (10-1-11 Edition)

verted Domestic Corporations, in each solicitation and contract for the acquisition of products or services (including construction).

[76 FR 31413, May 31, 2011]

Subpart 9.2—Qualifications Requirements

SOURCE: 50 FR 35476, Aug. 30, 1985, unless otherwise noted.

9.200 Scope of subpart.

This subpart implements 10 U.S.C. 2319 and 41 U.S.C. 253(e) and prescribes policies and procedures regarding qualification requirements and the acquisitions that are subject to such requirements.

9.201 Definitions.

As used in this subpart—

Qualified bidders list (QBL) means a list of bidders who have had their products examined and tested and who have satisfied all applicable qualification requirements for that product or have otherwise satisfied all applicable qualification requirements.

Qualified manufacturers list (QML) means a list of manufacturers who have had their products examined and tested and who have satisfied all applicable qualification requirements for that product.

[50 FR 35476, Aug. 30, 1985, as amended at 53 FR 34227, Sept. 2, 1988; 66 FR 2128, Jan. 10, 2001]

9.202 Policy.

(a)(1) The head of the agency or designee shall, before establishing a qualification requirement, prepare a written justification—

(i) Stating the necessity for establishing the qualification requirement and specifying why the qualification requirement must be demonstrated before contract award;

(ii) Estimating the likely costs for testing and evaluation which will be incurred by the potential offeror to become qualified; and

(iii) Specifying all requirements that a potential offeror (or its product) must satisfy in order to become qualified. Only those requirements which are the least restrictive to meet the